

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CADDELL, JR. JAMES W. and
CALDWELL, JAMES M.

Appeal No. 2004-0453
Application No. 09/828,019

ON BRIEF

Before GARRIS, OWENS and PAWLIKOWSKI, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the Final Rejection of claims 19-21, which are all of the claims in the application.

The subject matter on appeal relates to a turbine nozzle segment comprising first and second sections, the first section being previously used and the second section being

newly manufactured. This appealed subject matter is adequately illustrated by independent claim 19, which reads as follows:

19. A turbine nozzle segment comprising:
an outer band;
an inner band; and
first and second vanes disposed between said outer and inner bands,
wherein said first vane and contiguous portions of said outer and
inner bands define a first section of said nozzle segment and said
second vane and respectively contiguous portions of said outer
and inner bands define a second section of said nozzle segment,
said first section being previously used and said second section
being newly manufactured.

Claims 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable of Lee in view of Mendham, and claim 21 stands correspondingly rejected as being unpatentable over these references and further in view of Rasch.¹

Rather than reiterate the respective positions advocated by the appellants and by the examiner concerning these rejections, we refer to the Brief and to the Answer (as well as to the Final Office Action) for a complete exposition thereof.

OPINION

For the reasons which follow, we will sustain each of the rejections before us.

¹On Page 3 of the Brief, the appellants indicate that the appealed claims are grouped pursuant to the manner in which they have been rejected. Accordingly, in our disposition of this appeal, we will consider each of the arguments advanced against the examiner's rejections.

The turbine nozzle segment of Lee corresponds to the turbine nozzle segment defined by appealed independent claim 19 in all respects except for the claim requirement “said second section being newly manufactured.” In Lee’s turbine nozzle segment, both the first and second sections are previously used. As correctly indicated by the examiner, however, Mendham discloses removing a damaged portion of a used turbine vane assembly and replacing this damaged portion with a member cut from a blank, wherein the blank “may be scrapped nonengine run castings (scrapped for defects outside the area to be used) or from independently manufactured insert blanks (used when scrape castings are not available or when base material is not castable)” (column 5, lines 60-64). Thus, Mendham discloses an embodiment wherein the repaired turbine vane assembly includes a previously used part and a newly manufactured part. It is the examiner’s position that it would have been obvious for one having ordinary skill in the art to modify Lee’s turbine nozzle segments so that one of the sections thereof is newly manufactured rather than previously used in view of Mendham’s aforementioned teachings. In this way, a turbine nozzle segment could be manufactured during the circumstances when a first previously used section is available, but a complementary second previously used section is not available, that is, “when scrap castings are not available” for the complementary second section pursuant to the teachings of Mendham (column 5, lines 63-64).

The appellants argue that the above discussed combination proposed by the examiner would be contrary to Lee’s disclosure wherein only salvaged or previously used

sections are employed in the fabrication of a turbine nozzle segment. In this regard, the appellants emphasize that Lee characterizes his use of salvaged or previously used sections as yielding a low cost advantage (e.g., see lines 9-11 in column 2), and that the examiner's proposed combination of a previously used section with a newly manufactured section would be more costly than Lee's combination, wherein both sections are previously used. As properly noted by the examiner, however, the appellants' analysis clearly is incorrect in the circumstance when only a single previously used section is available. In this circumstance, it would be more economical to combine the previously used section with a complementary newly manufactured section, than it would be to discard or store the single previously used section (see especially the section entitled "Issue 4" on page 6 of the Answer). Significantly, the appellants have offered no rebuttal to the examiner's position on this matter.

In light of the foregoing, it is our determination that the examiner has established a prima facie case of obviousness with respect to claims 19 and 20, which the appellants have not successfully rebutted with argument and/or evidence of non-obviousness. It follows that we will sustain the examiner's Section 103 rejection of claims 19 and 20 as being unpatentable over Lee in view of Mendham. See In re Oetiker, 977 F.2d 1443, 1445 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

As for Claim 21, the appellants' sole argument against the rejection of this claim is that, "[e]ven if it were obvious to combine the teaching of Rasch...with those of Lee...and Mendham, the combination does not cure the failure of Lee...to teach each and

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every element of independent claim 19, from which claim 21 depends, as discussed above” (Brief, page 6). This argument is unpersuasive since, as previously explained, the reference evidence set forth by the examiner (i.e., the Lee and Mendham references) establishes a prima facie case of obviousness with respect to appealed independent claim 19. We will also sustain, therefore, the examiner’s Section 103 rejection of claim 21 as being unpatentable over Lee in view of Mendham and further in view of Rasch.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
)	
)	
TERRY J. OWENS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
BEVERLY A. PAWLIKOWSKI)	
Administrative Patent Judge)	

BRG/dpv

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